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Written statement* submitted by the Public Organization "Public Advocacy", a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[09 August 2018]

* Issued as received, in the language(s) of submission only.

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Draft laws Nos. 4128, 4511, 5309 as a threat to religious peace and a new factor of territorial destabilization in Ukraine

The present statement is submitted for the second time to the United Nations Human Rights Council in order to draw its attention to the threat of breaking religious peace, which is still existent due to the fact that the draft laws Nos. 4128, 4511, 5309 are still under consideration by the Parliament of Ukraine. We urge the UN Human Rights Council to pay careful attention to this extremely important issue and take it under consideration as soon as possible.

1. Summary of violations of the UOC rights

In accordance with the Statement of Bishop Victor (Kotsaba), Head of Representative Office of the Ukrainian Orthodox Church to International Organizations at the OSCE Meeting, 22-23 June 2017, Vienna,[1] "In the period of 2015-2017, 45 temples – religious buildings owned by the UOC religious communities – were subject to raiding, while over 100 temples appeared under threat of such seizures. Officers of the police units, abusing their power, resorted to assault and battery toward our believers in the villages of Ptycha and Katerynivka of Ternopil region, having inflicted severe injuries on elderly people and women. Many religious buildings remain sealed by the authorities up to the present day. Such violent actions are carried out by members of radical organizations with the participation of interested religious confessions, with connivance – and sometimes even direct support – of local authorities".

2. Draft laws restricting rights of religious organizations of the UOC and establishing additional obligations for religious organizations of this denomination

During the year of 2016, three draft laws (## 4128, 4511, and 5309) were submitted to the Verkhovna Rada of Ukraine, which foresee an introduction of a number of additional obligations for religious organizations of the UOC confession. At the same time similar obligations are not envisioned for other confessions. In particular, draft law #4511 stipulates an obligation of the UOC religious communities to draw up individual agreements with state bodies, as well as to receive a permit to elect (appoint) diocesan administrative staff. Bill #5309 binds religious organizations of the UOC to include references on "affiliation to the aggressor state" into their title. Draft law # 4128 unreasonably and in violation of the international law norms establishes the rights of residents of a particular populated area to administer communities within their populated areas irrespective of whether these persons are members of the community's administrative body. The above draft laws are geared at the discriminatory restriction of the UOC in the enjoyment of its rights and if adopted – will bear witness to the ungrounded intrusion of the state into the internal administrative mechanism of religious organization, leading de-facto to the legal obstruction of activities of the UOC religious organizations.2

In particular, as the Head of Representative Office of the Ukrainian Orthodox Church to International Organizations Bishop Victor Kotsaba said at the OSCE meeting: "I want to draw particular attention to the preparation of draft laws Nos. 4128, 4511, 5309, submitted to the Verkhovna Rada of Ukraine, which are discriminatory in relation to the Ukrainian Orthodox Church. Thus, some politicians want to impose a special status on our denomination, oblige it to change the name and sign special agreements with state bodies. The appointment of priests is also supposed to be approved by the relevant state structures. At the same time, the obligation is not prescribed for other confessions. Such rules did not exist even in the times of the USSR, whose authorities used to put a systematic but unofficial pressure on the Church. In view of the above, on May 18, 2017, a prayerful standing, which counted thousands of believers, was held near the Parliament in Kiev against the adoption of these laws. Concerns about the probable adoption of such laws were expressed by the World Council of Churches, several Autocephalous Orthodox Churches (Alexandria, Bulgaria, Czech Lands and Slovakia), as well as the State Secretariat of the Vatican. Nevertheless, these bills are still on the agenda of the Ukrainian Parliament."

[1] http://www.osce.org/odihr/325191?download=true.
[2] https://www.protiktor.com/english/.

3. Non-compliance of draft law 4128 with international law

Bill No. 4128 foresees that persons who were not admitted to the community, but who decided to identify themselves with this community, receive the right to vote at a general meeting of the religious community.

Thus, according to the draft law, the provisions of the statutes of religious organizations that provide for membership in the community being obtained only on the basis of an application and establishing the need for approval of membership by a decision of the general meeting of the community members become invalid.

At the same time, standards of the international law establish an obligation of the state to ensure internal guidelines and norms of the religious right as a part of freedom to the freedom of religion. For this reason individuals who observe their religious guidelines can enjoy an unquestionable right to accept or not accept other persons to become members of their religious group, and independently define if these new comers are in line with the criteria enshrined by whatever religious doctrine.

There are no doubts that the person who does not conform to certain rules of religious life, which are deemed fundamental by the certain religious organization, can be not only non-admitted to membership of this religious group but also excluded from it. In fact, the European Court of Human Rights in the case Obst vs. Germany (№ 425/03), by the chamber resolution of 23.09.2010, declined a complaint of the applicant – member of the Mormon religious organization who had been made redundant in this organization and excluded from the community's membership due to the fact of his conjugal infidelity. The court admitted that the claimant, who had been raised in the Mormon environment, had to be aware of the importance of faithfulness in marriage and inappropriateness of misconduct under the regulations of this organization.

It's noteworthy, the European Court of Human Rights laid down some legal provisions which are not to be changed even by virtue of adopting the draft law under consideration. In particular, under the ECHR's decision dated 14.06.2007 in the case "Saint Michael parish against Ukraine", it is stated (para 146-147): "Contrary to the conclusions of national courts, articles 7 and 8 of the Law, it was not enshrined that a religious group shall consist of all individuals and all believers who attend worship services of a particular church… article 8 of the Law (987-12) in no way restricts or hampers a religious organization to determine on its own choice in which way it will decide to enroll new members, define the membership criteria and election procedure for the administrative bodies. From the standpoint of article 9 of the Convention (995_004), taken together with article 11, these were the decisions being in the private law plane and not being subject to interference from the state power bodies unless they violate rights of other individuals or fall under restrictions specified in para 2 of articles 9 and 11 of the Convention. In other words, the state cannot commit a legally existing private association to accept new members and exclude the elected ones. Intrusion of such kind will definitely enter into collision with the freedom of religious associations to freely regulate their behavior and handle their matters.

Conclusion: the right to self-identification of a person as a ground for his/her being enrolled as a member of the religious community and his/her being invested simultaneously with powers of the administrative body of the religious community appears as a violation of the international legal principle of autonomy of religious organizations and non-interference of the state into internal activity of denominations to be regulated solely by their internal rules and guidelines.

Therefore, the proposal of the draft law makers that persons can become members of the religious community merely by virtue of self-identification does not comply with the provision, defined in the International Law and enshrined in the above mentioned decision of the European Court of Human Rights.

Given the extreme tension as regards the religious situation in Ukraine, which exacerbated in 2018 due to numerous forceful confrontations and acts of violence against the Ukrainian Orthodox Church and its believers, we call on the international community to make every effort in order to prevent the Ukrainian Parliament from the adoption of the aforesaid bills.